

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

DIANE M.,

Plaintiff,

v.

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

Case No. C19-6103-MLP

ORDER

**I. INTRODUCTION**

Plaintiff seeks review of the denial of her application for Disability Insurance Benefits. Plaintiff contends the administrative law judge (“ALJ”) erred in finding that she had no severe impairments at step two. (Dkt. # 8 at 1.) As discussed below, the Court REVERSES the Commissioner’s final decision and REMANDS the matter for further administrative proceedings under sentence four of 42 U.S.C. § 405(g).

**II. BACKGROUND**

Plaintiff was born in 1962, has two years of college education and additional cosmetology training, and has worked as a hairstylist, preschool teacher, and self-employed merchandizer. AR at 30-32, 142. Plaintiff was last gainfully employed in December 2013. *Id.* at 142.

1 In June 2017, Plaintiff applied for benefits, alleging disability as of January 1, 2014. AR  
 2 at 129-31. Plaintiff's application was denied initially and on reconsideration, and Plaintiff  
 3 requested a hearing. *Id.* at 69-71, 74-76, 79-80. After the ALJ conducted a hearing on October  
 4 16, 2018 (*id.* at 25-25), the ALJ issued a decision finding Plaintiff not disabled. *Id.* at 15-21.

5 Utilizing the five-step disability evaluation process,<sup>1</sup> the ALJ found:

6 Step one: Plaintiff did not engage in substantial gainful activity between the time of her  
 7 alleged onset date and her date last insured.

8 Step two: Plaintiff has no severe impairments, and is therefore not disabled.

9 AR at 15-21.

10 As the Appeals Council denied Plaintiff's request for review, the ALJ's decision is the  
 11 Commissioner's final decision. AR at 1-6. Plaintiff appealed the final decision of the  
 12 Commissioner to this Court. (Dkt. # 1.)

### 13 III. LEGAL STANDARDS

14 Under 42 U.S.C. § 405(g), this Court may set aside the Commissioner's denial of social  
 15 security benefits when the ALJ's findings are based on legal error or not supported by substantial  
 16 evidence in the record as a whole. *Bayliss v. Barnhart*, 427 F.3d 1211, 1214 (9th Cir. 2005). As a  
 17 general principle, an ALJ's error may be deemed harmless where it is "inconsequential to the  
 18 ultimate nondisability determination." *Molina v. Astrue*, 674 F.3d 1104, 1115 (9th Cir. 2012)  
 19 (cited sources omitted). The Court looks to "the record as a whole to determine whether the error  
 20 alters the outcome of the case." *Id.*

21 "Substantial evidence" is more than a scintilla, less than a preponderance, and is such  
 22 relevant evidence as a reasonable mind might accept as adequate to support a conclusion.  
 23 *Richardson v. Perales*, 402 U.S. 389, 401 (1971); *Magallanes v. Bowen*, 881 F.2d 747, 750 (9th

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<sup>1</sup> 20 C.F.R. § 404.1520.

1 Cir. 1989). The ALJ is responsible for determining credibility, resolving conflicts in medical  
2 testimony, and resolving any other ambiguities that might exist. *Andrews v. Shalala*, 53 F.3d  
3 1035, 1039 (9th Cir. 1995). While the Court is required to examine the record as a whole, it may  
4 neither reweigh the evidence nor substitute its judgment for that of the Commissioner. *Thomas v.*  
5 *Barnhart*, 278 F.3d 947, 954 (9th Cir. 2002). When the evidence is susceptible to more than one  
6 rational interpretation, it is the Commissioner's conclusion that must be upheld. *Id.*

#### 7 IV. DISCUSSION

8 Plaintiff argues that the ALJ erred in finding at step two that she had no severe  
9 impairments, particularly because a State agency opinion that the ALJ credited in making that  
10 finding actually found that Plaintiff did have severe impairments, although the ALJ described the  
11 opinion as suggesting that Plaintiff did not have severe impairments. *Compare* AR at 20 *with id.*  
12 at 65-66.

13 The Commissioner concedes that the ALJ erred with respect to the State agency opinion,  
14 but argues that this error is harmless because the State agency reviewer ultimately concluded that  
15 Plaintiff's severe impairments would not preclude all work, and she was therefore not disabled.  
16 (Dkt. # 9 at 3.) The Commissioner has not shown that the ALJ's error is harmless, however,  
17 because the State agency reviewer's opinion goes beyond the ALJ's decision to indicate that  
18 Plaintiff's severe impairments would not preclude all work (AR at 66), but the ALJ did not  
19 address or credit that portion of the opinion because the ALJ did not assess Plaintiff's RFC or  
20 address whether that RFC precluded work. Because the ALJ ended the sequential evaluation  
21 process at step two (the step at which the ALJ made the error in reading the State agency  
22 opinion), there are no findings within the ALJ's decision that would permit the Court to find that  
23 the ALJ's erroneous reading of the State agency decision did not impact the ALJ's ultimate

1 conclusion. *See Brown-Hunter v. Colvin*, 806 F.3d 487, 492 (9th Cir. 2015) (“A reviewing court  
2 may not make independent findings based on the evidence before the ALJ to conclude that the  
3 ALJ’s error was harmless.”).

4 Accordingly, this case must be remanded to allow the ALJ to reconsider the State agency  
5 opinion and the entirety of the step-two findings.

6 **V. CONCLUSION**

7 For the foregoing reasons, the Commissioner’s final decision is REVERSED and this  
8 case is REMANDED for further administrative proceedings under sentence four of 42 U.S.C. §  
9 405(g). On remand, the ALJ should reconsider the State agency opinion and the entirety of the  
10 step-two findings, with attention to the evidence pertaining to Plaintiff’s deterioration in 2013  
11 from stage 2 kidney disease to stage 3. AR at 1377, 1439. If necessary, the ALJ should go on to  
12 subsequent steps in the sequential evaluation.

13 Dated this 27th day of April, 2020.

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16 MICHELLE L. PETERSON  
17 United States Magistrate Judge  
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